

From: "dbooth@boothsweet.com" <dbooth@boothsweet.com>
Subject: **Re: Schwern v. Plunkett, No. 3:14-cv-00146-PK**
Date: February 3, 2016 4:18:37 PM EST
To: gary_magnuson@ord.uscourts.gov
Cc: Bear Wilner-Nugent <bwnlaw@gmail.com>, Lake Perriguet <lake@law-works.com>

Mr. Magnuson,

Thank you. Mr. Plunkett does intend to oppose the plaintiff's motion for substitution of parties. I will file a motion requesting a hearing.

Dan Booth
Booth Sweet LLP
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On Feb 2, 2016, at 6:20 PM, gary_magnuson@ord.uscourts.gov wrote:

Mr. Booth:

Judge Papak responds as follows:

"Please advise counsel for both parties (i) that in the view of the court, because the case is stayed, Patrick Plunkett need not answer the complaint until such time as the stay is lifted, (ii) if Patrick Plunkett intends to oppose the motion for substitution of parties, his counsel can file a motion requesting a hearing and that hearing can be held during the pendency of the stay and, until the hearing is held, Schwern can continue filing status reports on his own, and (iii) if Patrick Plunkett does not intend to oppose the motion for substitution of parties, he should so advise counsel for plaintiff and thereafter the parties should file status reports jointly."

Thank you.

Gary Magnuson,
Courtroom Deputy,
U.S. District Court,
District of Oregon.
(503) 326-8055; fax (503) 326-8010
gary_magnuson@ord.uscourts.gov

From: "dbooth@boothsweet.com" <dbooth@boothsweet.com>
To: gary_magnuson@ord.uscourts.gov
Cc: Bear Wilner-Nugent <bwnlaw@gmail.com>, Lake Perriguet <lake@law-works.com>
Date: 02/02/2016 09:26 AM
Subject: Schwern v. Plunkett, No. 3:14-cv-00146-PK

Dear Mr. Magnuson,

I have a few procedural questions related to the above case, which is currently stayed pending the defendant's appeal to the Ninth Circuit on the anti-SLAPP motion to strike. (Doc. 38, 60.) The original defendant N       Plunkett died last year. (Doc. 61.) Yesterday the plaintiff filed an affidavit reflecting service of the motion to substitute on my client Patrick Plunkett, N      's father and administrator of the estate. (Doc. 67.)

The plaintiff and Mr. Plunkett believe that the stay tolls the 21-day period for Mr. Plunkett to file an answer or responsive motion under Rule 12 (as discussed in the email below). Can you confirm?

Rule 25(a)(3) anticipates a hearing on the motion to substitute, though the plaintiff did not serve a notice of hearing. Does the stay postpone that hearing?

Finally, the Court ordered the parties to file a formal joint status report every 120 days pending the Ninth Circuit's decision. (Doc. 38.) The plaintiff filed the latest report on his own, as he had not perfected service on Mr. Plunkett. (Doc. 65.) The Court granted the motion for substitution, then recognized that service had not been perfected. (Doc. 63, 66.) Pending completion of service with a notice of hearing on the motion for substitution, should the plaintiff continue to file the formal status reports on his own?

Because of the stay I thought it best to seek guidance informally, but we will file a formal motion for clarification if needed. Thank you for your assistance.

Sincerely,

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Begin forwarded message:

From: Bear Wilner-Nugent <bwnlaw@gmail.com>
Date: January 20, 2016 3:37:27 PM EST
To: "dbooth@boothsweet.com" <dbooth@boothsweet.com>
Subject: Re: Schwern v. Plunkett

I can confirm your understanding, yes. Thank you.

Bear Wilner-Nugent, Counselor and Attorney at Law LLC
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Portland, Oregon 97204
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bwnlaw.com
@OregonMJLaw

On Wed, Jan 20, 2016 at 12:34 PM, dbooth@boothsweet.com <dbooth@boothsweet.com> wrote:
Bear,

Happy new year. Mr. Plunkett tells me he was served. Ordinarily service would start the time for him to answer or file a Rule 12 motion. However, it's my understanding that any obligation to respond is postponed by the Court's order staying the action until the Ninth Circuit decides the anti-SLAPP motion. Would you please confirm that you share that understanding? If so, I believe our next step will be another status report in March (the Ninth Circuit still has no date listed for the oral argument).

Thanks,

Dan

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